

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

ALBERT ALLEN POWELL,

Petitioner,

vs.

CASE NO. 05-70205  
HON. LAWRENCE P. ZATKOFF  
MAGISTRATE JUDGE PAUL KOMIVES

MARY BERGUIS,

Respondent.

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**ORDER DENYING CERTIFICATE OF APPEALABILITY**

This matter is before the Court for a determination as to whether a certificate of appealability should issue in this matter. “In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless” a certificate of appealability is issued under 28 U.S.C. § 2253(c). FED. R. APP. P. 22(b)(1). A certificate of appealability may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In order to make such a substantial showing, a petitioner must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Court has reviewed the original petition, as well as the supporting materials. The petition was denied because it was filed past the one year limitations period mandated by 28 U.S.C. § 2244(d)(1). The Court declines to issue a certificate of appealability because reasonable jurists would not find this Court’s assessment of petitioner’s claims to be debatable or wrong. *Slack v.*

*McDaniel*, 529 U.S. 473, 484 (2000).

Accordingly, IT IS ORDERED that no certificate of appealability shall issue in this matter.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF

UNITED STATES DISTRICT JUDGE

Dated: July 26, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on July 26, 2006.

s/Marie E. Verlinde

Case Manager

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